IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

KEANDRE G.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND N.T.,
Appellees.

No. 2 CA-JV 2018-0107
Filed October 29, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD204472
The Honorable Lisa Bibbens, Judge Pro Tempore

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Eppich concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Appellant Keandre G. challenges the juvenile court's order of May 18, 2018, terminating his parental rights to N.T. on the grounds of chronic substance abuse and his inability to remedy the circumstances causing N.T. to remain in a court-ordered, out-of-home placement for longer than fifteen months. *See* A.R.S. § 8-533(B)(3), (8)(c). On appeal, Keandre challenges the sufficiency of the evidence to sustain those statutory grounds for severance or to establish that terminating his parental rights was in the child's best interest.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008).

¶3 N.T. was removed from his mother's care in December 2015 after testing positive for opiates at birth. Keandre was incarcerated at the time. After his release from confinement, Keandre was scheduled for random drug testing and was required to develop parenting skills, maintain safe and stable housing, and obtain a legal source of income. N.T. was adjudicated dependent after Keandre pled no contest to the allegations in a dependency petition in March 2016. Keandre was at times partially compliant with his case plan, and by September 2017, he had completed required case plan tasks allowing him to "move forward with a transition plan to place" N.T. in his care, subject to his maintaining thirty days of sobriety.

¶4 By March 2018, however, Keandre had become only "minimally complaint on his case plan tasks." He failed to participate in visitation or random drug tests. On several occasions throughout 2017, when he did test, he tested positive for opiates or cocaine. In January 2018, the Department of Child Safety (DCS) offered a parent coach, but Keandre refused to allow the coach into his apartment. He also failed to meet with DCS personnel.

¶5 At a contested severance hearing after DCS had filed a motion to terminate Keandre's parental rights, the family's case manager testified that Keandre would be unlikely to be able to parent N.T. in the near future due to his inability to maintain sobriety. And he explained that at the time of the hearing DCS was uncertain as to Keandre's housing and employment status. After the hearing, the juvenile court granted the motion to terminate, concluding DCS had established the time-in-care and chronic-substance-abuse grounds.

¶6 On appeal, Keandre argues the juvenile court erred in terminating his rights on the ground of chronic substance abuse. To establish this ground for termination, the state must show a parent has "a history of chronic abuse of dangerous drugs," "is unable to discharge parental responsibilities" due to that history, and "there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." § 8-533(B)(3). Substance abuse "need not be constant to be considered chronic"; chronic abuse exists when addiction "has persisted over a long period[] and . . . is lingering." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ¶¶ 16-17 (App. 2010).

¶7 Keandre asserts that contrary to the juvenile court's statement that it was not considering his use of medical marijuana, "the only evidence cited by the court in support of a 'history' of 'chronic' drug use" related to marijuana. The record does not support this contention.

¶8 In its ruling, the juvenile court noted that Keandre had begun using marijuana "at age seven and began smoking marijuana daily at age twelve." At the time of the severance hearing, Keandre was twenty-seven years old; meaning he had used marijuana regularly for approximately seven years before the Arizona Medical Marijuana Act (AMMA) was enacted in 2010. *See Gersten v. Sun Pain Mgmt., P.L.L.C.*, 242 Ariz. 301, ¶ 1 (App. 2017) (noting AMMA adopted in 2010). All of that use was unlawful, and Keandre cites no authority that the juvenile court could not consider it in evaluating his chronic substance use.

¶9 The juvenile court also noted that Keandre had been incarcerated "on a parole violation related to narcotics possession" at the time N.T. was born. It also found that Keandre took nearly six months to submit to a hair follicle test, and upon doing so, tested positive for methamphetamines, opiates, and codeine, along with tetrahydrocannabinol (THC). It also found Keandre had tested positive four times for morphine "over the course of this case." In noting the positive THC result, the court also noted Keandre's "prescription for medical marijuana." The court also found that after Keandre was involved in a vehicle accident, he was given morphine, but was not given a prescription for morphine after his release from the hospital. The court found Keandre had again tested positive for morphine in the fall of 2017 and that "no credible evidence exists to establish" that those positive results "were the result of medication administered by a medical professional." The court determined Keandre had not participated in drug tests from November 2017 until the hearing in May 2018.

¶10 In challenging the juvenile court's findings, Keandre relies on favorable evidence, but does not address the contrary evidence cited by the court. His argument amounts to a request for this court to reweigh the evidence relating to his substance abuse; that we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). Rather, because the record supports the court's ruling, we defer to its factual findings. *See In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115 (1978). And because sufficient evidence supports this ground, "we need not address claims pertaining to the other grounds." *Jesus M.*, 203 Ariz. 278, ¶ 3.

¶11 Keandre also challenges the juvenile court's best interest finding. To establish that termination is in a child's best interest, a petitioner must show how the child would benefit from termination or be harmed by the continuation of the parent-child relationship. *In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). As our supreme court recently reaffirmed in *Alma S. v. Department of Child Safety*, "The 'child's interest in stability and security' must be the court's primary concern." 245 Ariz. 146, ¶ 12 (2018) (quoting *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016)). That a child's current placement is meeting the child's needs is a proper factor for the court to consider in determining a child's best interest. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5 (App. 1998). So, too, is the fact that the child is in a home where the placement wishes to adopt the child. *See Demetrius L.*, 239 Ariz. 1, ¶¶ 12, 16. "In a best interests inquiry . . . we can presume that the interests of the parent and child diverge

because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Kent K.*, 210 Ariz. 279, ¶ 35. "Once a juvenile court finds that a parent is unfit, the focus shifts to the child's interests." *Demetrius L.*, 239 Ariz. 1, ¶ 15. "Thus, in considering best interests, the court must balance the unfit parent's 'diluted' interest 'against the independent and often adverse interests of the child in a safe and stable home life.'" *Id.* (quoting *Kent K.*, 210 Ariz. 279, ¶ 35).

¶12 In this case, although N.T.'s placement at the time of the hearing was not a potential adoptive home, there had been contact with a new, prospectively adoptive, foster family, which had "been going—fairly smooth." The case worker also testified that N.T. would benefit from stability and permanency, rather than "languishing" in foster care. And he testified that N.T. was "adoptable," based on his having "easily bonded with his placement" and that his "needs c[ould] be sufficiently met" in a more permanent, stable home. *See Alma S.*, 245 Ariz. 146, ¶ 13 ("While a [factfinder] may find that severance is in a child's best interests if the child is found to be adoptable, the [factfinder] is not required to do so.") (alterations in *Alma S.*) (quoting *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, ¶ 11 (App. 2008)).

¶13 Again, Keandre essentially asks us to reweigh the evidence and ignores the negative evidence presented, including testimony that N.T. would be harmed if Keandre's rights are not severed because he will "have to remain in foster care and he will be denied permanency." But in view of Keandre's diluted interest, *Demetrius L.*, 239 Ariz. 1, ¶ 15, and the evidence of N.T.'s best interest, we cannot say that no reasonable person could find those essential elements proven by a preponderance of the evidence, *see Denise R.*, 221 Ariz. 92, ¶ 10.

¶14 For these reasons, we affirm the juvenile court's order terminating Keandre's parental rights to N.T.